

SENATE BILL REPORT

ESSB 5038

As Amended by House, March 28, 2021

Title: An act relating to prohibiting the open carry of certain weapons at public permitted demonstrations and the state capitol.

Brief Description: Prohibiting the open carry of certain weapons at public permitted demonstrations and the state capitol.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Kuderer, Das, Carlyle, Darneille, Dhingra, Hunt, Liias, Lovelett, Nguyen, Pedersen, Rolfes, Saldaña, Salomon, Wellman and Wilson, C.).

Brief History:

Committee Activity: Law & Justice: 1/26/21, 1/28/21 [DPS, DNP].

Floor Activity: Passed Senate: 2/25/21, 28-20.

Passed House: 3/28/21, 57-40.

Brief Summary of Engrossed First Substitute Bill

- Prohibits the open carry of a firearm or other weapons at or near public demonstrations, the west state capitol grounds, capitol grounds buildings, and other legislative locations.
- Provides an exception for federal, state, and local law enforcement officers.
- Makes violations of these prohibitions a gross misdemeanor.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5038 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille, Kuderer and Salomon.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Holy and Wagoner.

Staff: Tim Ford (786-7423)

Background: Firearms Prohibited in Designated Places. Weapons, including firearms, are prohibited statewide in certain designated places. These places are:

- the restricted access areas of a jail or law enforcement facility;
- courtrooms and other areas adjacent to or used in conjunction with court proceedings;
- the restricted access areas of a public mental health facility;
- taverns and other places that are made off-limits to persons under age 21 by Liquor Control Board rules; and
- the restricted access areas of commercial service airports.

The perimeter of the above premises must be posted at reasonable intervals to alert the public to the existence of any law restricting the possession of firearms on the premises.

"Weapon" is defined in statute as a firearm, explosive, or an instrument or weapon listed in another statute governing dangerous weapons. The dangerous weapon statute prohibits:

- the possession of slung shots, sand clubs, metal knuckles, spring blade knives, and knives that open by a spring mechanism or by the force of gravity or a downward or outward thrust;
- the furtive carrying, with intent to conceal, any dagger, dirk, pistol, or other dangerous weapon; and
- the use of any device for suppressing the noise of a firearm.

Any person violating this prohibition is guilty of a gross misdemeanor.

Gross Misdemeanors. Every person convicted of a gross misdemeanor shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to 364 days, or by a fine in an amount fixed by the court of not more than \$5,000, or by both.

Summary of Engrossed First Substitute Bill: It is unlawful for any person to knowingly open carry a firearm or any weapon:

- while at any demonstration being held at a public place—this prohibition applies whether the person carries the weapon on their person or in a vehicle;
- within 250 feet of a demonstration at a public place after a duly authorized state or local law enforcement officer advises the person of the demonstration and directs the person to leave until they no longer possess or control a weapon—this prohibition does not apply to any person possessing or controlling any firearm or other weapon on private property owned or leased by that person; and
- on the west state capitol grounds, in any building on the state capitol grounds, in any state legislative office, or at any location of a public legislative hearing or meeting during the hearing or meeting.

Federal, state, and local law enforcement officers and personnel are exempt from the prohibition when carrying a firearm in conformance with their employing agency's policy.

"Permitted demonstration" means a gathering of 15 or more people at a single event in a public place for which a permit has been issued by a government agency or has been designated as permitted by certain local government officials.

"Public place" means any site accessible to the general public for business, entertainment, or other lawful purpose. It includes, but is not limited to, the front, immediate area, or parking lot of any store, shop, restaurant, tavern, shopping center, or other place of business; any public building, its grounds, or surrounding area; or any public parking lot, street, right-of-way, sidewalk, public park, or other public grounds.

A person violating these prohibitions is guilty of a gross misdemeanor.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The purpose of openly carrying a weapon at a protest is to intimidate people who are exercising their First amendment rights. It only serves to increase the risk of violence or death. We have seen armed groups engaged with peaceful protesters sometimes with deadly consequences. The most alarming trend is the increase of armed vigilante activity and intimidation with firearms. This bill is a common sense approach to ensure that weapons are not used to intimidate peaceful protesters. This bill is modeled after an existing law in the pro-gun state of Alabama. The bill does not prevent someone with a concealed carry permit to carry concealed. There is not a conflict with the Second Amendment. You are just limited to how and where you can exercise the Second Amendment similar to existing restrictions for courts, jails, and such. This is a reasonable restriction on the Second Amendment.

CON: Many citizens choose to exercise the right to open carry firearms every day without incident. Others find it necessary to openly carry in order to deter criminal behavior in their neighborhoods and businesses especially when there is an absence of law enforcement resources. The definition of demonstration is unconstitutionally vague where anyone at anytime for any reason expressing views or grievances that have the effect of attracting a crowd somehow constitutes a demonstration. There is no definition of a crowd. It is unconstitutional to remove one person's Second Amendment constitutional rights solely on

the basis of another person, three football fields away, exercising their First Amendment rights. The enforcement of this new law is ripe for abuse and certain communities could be targeted.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Cheryl Stumbo, Everytown for Gun Safety, Survivors Program Manager; Marcel McCants, Everytown Survivor Network; Rebecca Elbaum, citizen; Jay Ward, citizen; Kathleen Reynolds, citizen; Laura Klienhofs, citizen; Eric Richey, citizen; Breean Beggs, citizen; Adrian Diaz, citizen; Margy Heldring, citizen; Cheryl Selby, citizen; Girmay Zahilay, citizen; Liz Hjelmseth, citizen; Lyn Idahosa-Berry, citizen; Laura Johnson, citizen; Courtney Thomas, citizen; Daniel Weiner, Rabbi; Paula Barnes, citizen; Joanna Briese, citizen; Niko Battle, citizen; Jane Weiss, citizen.

CON: Duncan Clark, citizen; Wesley Scott, citizen; Ivan Chongarov, citizen; Patrick Zunk, citizen; Dana Morgan, citizen; Jonathan Gibson, citizen; Eric Pratt, citizen; Ernest Rodriguez, citizen; Igor Shishov, citizen; Mark Muenster, Washington Association of Criminal Defense Lawyers; Kaz Foster, Army Veteran; Tom Kweciak, National Rifle Association; Daniel Mitchell, Sporting Systems; Chip Schmeets, citizen; Jessica Zielinski, citizen; Sharyn Hinchcliffe, citizen; Curtis Bingham, Washington Civil Rights Association; Kyle Thannisch, citizen; Luis Berbesi, citizen; Eric Shaeffer, citizen; Logan Rose, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Ariel Young, citizen; Cheryl Berenson, Alliance for Gun Responsibility; Jane Weiss, citizen; Jeannie Shu, citizen; David O'Connor, citizen; Jennifer Dolan-Waldman, Grandmothers Against Gun Violence; Gayle Davis, citizen; Lisa Losh, Grandmothers Against Gun Violence; Pat Griffith, League of Women Voters of Washington; Carol Fish, citizen; Cheryl Selby, City of Olympia/Mayor; Kevin Lewis, citizen; Devon Connor-Green, The Washington Black Lives Matter Alliance; Seth Dawson, Washington Association for Substance Abuse & Violence Prevention; Neil Black, City of Kirkland; Peter Messinger, citizen; Eileen Alexander, citizen; Janette Ambauen, citizen; Stacy Anderson, citizen; Harriet Arkley, citizen; Ian Baldwin, citizen; Virginia Bearson, citizen; Bruce Becker, citizen; Sandra Bensky, citizen; Judy Bentley, citizen; Paul Benz, citizen; Dominick Bergeron, citizen; Carolyn Bernhard, citizen; Bharti Bharani, citizen; Nancy Boespflug, citizen; Antoinette Bonsignore, citizen; Katherine Boyette, citizen; Kevin Brannon, citizen; Jason Breeze, citizen; Cinnamon Brown, citizen; Sage Miller, citizen; Tim Burns, citizen; Coralie Burns, citizen; Charlene Kahn, citizen; Justin Camarata, citizen; June Campbell, citizen; Karen Lucero, citizen; Zachary Carstensen, citizen; John Miller, citizen; Andrew Caughie, citizen; Jenny Clauson, citizen; Richard Firth, citizen; Linda Clifton, citizen; Judith Cohen, citizen; Donna Benaroya, citizen; Ann Cook, citizen; Renee Herst, citizen; Yanah Cook, citizen; Malcolm Cumming, citizen; Hae Sue Park, citizen; Brian Cutler, citizen; Carol Sullivan, citizen; Sophia Damelio, citizen; Alyssa Dayley, citizen; Jolie Hellings, citizen; Jolie Cwinar, citizen; David Dittmore, citizen; Linda Leste, citizen; Sean Dittrich, citizen; Charles Domingue, citizen; Sophia Moser, citizen; Abe Rios, citizen; Jean Marie Dreyer, citizen; Alexander Gray, citizen; Samantha Eden, citizen; Nicolas Duchastel, citizen; Melissa Dunbar, citizen;

Hazel Brown; Kevin Collins; Treyvon Dunbar; Sean Kent; Maureen McGregor; Bob Ellis; Chelsey Wright; Marilyn Ellis; Joanne Engquist; Kristen Ellingboe; Nelago Nuunyang; Dylan O'Connor; Tamara Erikson; Waits, citizen; Erika Fairman, citizen; Renee Hopkins, citizen; John Fairman, citizen; Sara Reyerson, citizen; Laurie Fairman, citizen; Laurie Valliancourt, citizen; Niles Fairman, citizen; Laurie Brockmann, citizen; David Fish, citizen; Delight Roberts, citizen; Randi Fleming, citizen; Sundae Delgado, citizen; Wesley Francis, citizen; Lenea Fritz, citizen; Laurie Werner, citizen; Jeff Panagos, citizen; Nyla Fritz, citizen; Richard Gellman, citizen; Max Booher, citizen; Stephanie Gianarelli, citizen; Stacey Sanner, citizen; Richard Gibson, citizen; Heidi Rutledge, citizen; Nancy Gilbert, citizen; Claire Cunningham, citizen; Dawn Petricciani, citizen; Meredith Goldstein, citizen; Zach Silk, citizen; Alice Goss, citizen; Mathew Bellew, citizen; Margaret Graham, citizen; Elizabeth Heath, citizen; Sheila Guizzetti, citizen; Kaplowitz Andrew, citizen; Call Beth, citizen; Kennedy Gwin, citizen; Christine Hanks, citizen; Rachel Van Gelder, citizen; Maurice Hanks, citizen; Amy Harmala, citizen; Elizabeth Hauser, citizen; Greg Hauth, citizen; Janet Hoffman, citizen; Debbie Hollyer, citizen; Adrianna Hulscher, citizen; Julia Hurd, citizen; Laura Hurtado-Webb, citizen; Patrick Inniss, citizen; Tamara Ritchie, citizen; Aquilla Jackson, citizen; Beau Jackson, citizen; Edward Humble, citizen; Jaxx Asukaa, citizen; Luisa Recalcati, citizen; Jordan Jeffers, citizen; Willa Jeffers, citizen; Nancy Helvy, citizen; Tiara Jewell, citizen; Eva Johnson, citizen; Kyra Humphrey, citizen; Kathy Jones, citizen; Jennifer Estroff, citizen; Sara Julin, citizen; Mary WillAllen, citizen; John Kennedy, citizen; Leanne Kennedy, citizen; Jon Younger, citizen; John Kingslight, citizen; Susan Wilson, citizen; Jeanne Koenings, citizen; Raven Wilson, citizen; Evan Koepfler, citizen; Megan Koznek, citizen; Aileen Willmoth, citizen; Daniel Kraus, citizen; Roger Williams, citizen; Sandy Krauss, citizen; Joe Kunzler, citizen; Anita Latch, citizen; Connie Williams, citizen; John Lederer, citizen; Deborah Leslie, citizen; Glenn Lestz, citizen; Jan Weisel, citizen; Lynne Levine, citizen; Zachary Locken, citizen; Frederic Webster, citizen; Bharat Shyam, citizen; Shannon Mayo, citizen; Susan McBain, citizen; Judy McBroom, citizen; Suzzane Tripp, citizen; Sharon Victor, citizen; Shelley Dreyer-Green, citizen; Kristen Michelle Donovan, citizen; Nancy Dombrowski, citizen; Jeannie Mitchell, citizen; Ray Moser, citizen; Christine Warren, citizen; Jordan Van Voast, citizen; Tim Moses, citizen; Corrine Kocher, citizen; Roberta Nestaas, citizen; Timothy Noonan, citizen; Gail Warren, citizen; Lori Cohen-Sanford, citizen; Roger Nystrom, citizen; Winston Walker, citizen; Cristina Cantor, citizen; Carl Larson, citizen; Xander Waits, citizen; Richard Gammon, citizen; Eva Wahl, citizen; Sue Amorosi, citizen; Kimberly Clarke, citizen; William Hochberg, citizen; Susan Abolafya, citizen; Deborah Viertel, citizen; Lisa Morris, citizen; Richard Osborn, citizen; David Varnau, citizen; Patricia Otley, citizen; Ann Aubuchon, citizen; Michael Alan Paolini, citizen; David Turnoy, citizen; Lorren Garlich, citizen; Patrick Parisot, citizen; Michell Turley, citizen; Carla Wulfsburg, citizen; Susan Paro, citizen; Ian Taylor, citizen; Leeroy Perkins, citizen; Patricia Perron, citizen; Annie Phillips, citizen; Octavian Pop, citizen; Mike Ramey, citizen; David Ringlee, citizen; Katherine Roscher, citizen; Nancy Salovich, citizen; Susan Schulkin, citizen; Erin Senge, citizen; Goldie Silverman, citizen; Tina Simcich, citizen; Susan Simon, citizen; Tamara Sloan Ritchie, citizen; Erin Sloane, citizen; Thaddeus Smith, citizen; Jeff Snow, citizen; Gregory Sorlie, citizen; Ashley Sternberg, citizen; Donna Stringer, citizen; Justine Stromberg,

citizen; Shawn Stromme, citizen; Diane Studley, citizen; Cherry Summers, citizen; Mardel Tanquist, citizen; Roger Tanquist, citizen; Courtney Nevitt, citizen; Brian Grad, Anti-Vigilantism Action, Training and Research.

CON: Aidan Nickels, citizen; Carter McKaughan, Montlake Investigations Group; Shane Cridlebaugh, citizen; Cory Rich, citizen; Julius Rody, Firearm Policy Coalition; George Langer, citizen; Alexander Black, citizen; David Ahrens, citizen; Mason Ludy, citizen; Jacob Arnold, citizen; Daniel Studer, citizen; Elias Tooloe, citizen; Tom Harleman, citizen; Tom Shofner, citizen; Judi Holley, citizen; Grant Kulberg, citizen; Kevin Montgomery, citizen; Cooper Kirsch, citizen; Michael Dawkins, citizen; Sreypov Dawkins, citizen; Paul Uhl, citizen; Tyler Maxfield, citizen; Anthony Siverson, citizen; Curtis Richman, citizen; Christopher Huennekens, citizen; Emerson Elliott, citizen; Donald Wynn, citizen; Tadd Howard, citizen; Jeff Pack, citizen; Damon Mon-Wai, citizen; David Westhaver, Shoreline Community College; David Westhaver, citizen; Mitchell Krume, citizen; Michael Crilly, citizen; Jack Trinneer, citizen; Gilbert Rodriguez, citizen; Joshua Young, citizen; Garrett Clay, citizen; Soleil Golden, citizen; Charles Eakins, citizen; Stephen Fly, citizen.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs.

EFFECT OF HOUSE AMENDMENT(S):

- Removes language "as described in this chapter" when referring to a firearm or other weapon.
- Defines a "gathering" as a demonstration, march, rally, vigil, sit-in, protest, picketing, or similar public assembly, within the definition of a "permitted demonstration."
- Conforms technical differences of language in different sections providing exemptions for law enforcement and armed forces.
- Adds a severability clause.
- Specifies that the open carry of a firearm or other weapon is prohibited within 250 feet "of the perimeter" of permitted demonstrations.
- Provides that nothing in the act applies to the lawful concealed carry of a firearm by a person who has a valid concealed pistol license.
- Adds an emergency clause and provides that the act takes effect immediately.
- Provides that the person must be knowingly at or within 250 feet of a permitted demonstration, or knowingly in the specified capitol campus grounds or buildings or other state legislative locations, in order for the criminal penalty to apply.